<u>REMARKS</u>

This application contains claims 1-50. Claims 1-38 have been canceled without prejudice. New claims 39-50 have been added. No new matter has been introduced. Reconsideration is respectfully requested.

Applicant is <u>not</u> conceding that the subject matter encompassed by the claims prior to this amendment is not patentable over the art cited by the Examiner. In particular, claims 1-38 were canceled in this amendment solely to facilitate expeditious prosecution of the subject matter of new claims 39-50. Applicant respectfully reserves the right to pursue claims, including the subject matter encompassed by the claims as presented prior to this amendment and additional claims, in one or more continuing applications.

Claims 17-38 were previously withdrawn in response to a restriction requirement. These claims have been canceled, as noted above.

Claims 1-16 were rejected under 35 U.S.C. 101 for allegedly being performable within the human mind. Contrary to the Examiner's position, Applicant does not believe that it is possible to optimize an IT business infrastructure within the human mind. In view of the cancellation of claims 1-16, however, this rejection is moot. New claim 39 explicitly recites the steps of configuring and reconfiguring hardware and software resources, and thus meets the requirements of 35 U.S.C. 101 in any event.

Claim 14 was rejected under 35 U.S.C. 112, second paragraph, for use of the term, "such as." In view of the cancellation of claim 14, this rejection is now moot. Applicant has refrained from using the offending term in the new claims.

Claims 1-3, 5-13, 15 and 16 were rejected under 35 U.S.C. 102(e) over Agarwal, et al. (U.S. Patent Application Publication 2004/0117224). Applicant has

canceled these claims in favor of new claims 39-48, and the rejection is therefore moot.

New independent claim 39 recites a method in which a business metric is defined, corresponding to a business objective that is to be met by an IT infrastructure. A business model is established, as well, comprising a system model, a user behavior model, and a business level model, which determines the impact on the business metric of events that occur in the IT infrastructure. Situations, comprising events and associated conditions, are generated and processed in order to identify a change in the IT configuration that will enhance the business metric. The resources of the IT infrastructure are reconfigured accordingly. The elements of claim 39 are disclosed in claims 1, 6, 8, 10 and 12 as filed, with additional explanatory language derived from Fig. 2 (business model 25), with the accompanying description in the text (page 6, line 28 – page 7, line 23), and from page 5, lines 13-26 (regarding generation and processing of situations).

The cited art neither teaches nor suggests this sort of method for analyzing the IT infrastructure using business objectives, metrics, models and situations, and using this information in reconfiguring the infrastructure as recited in new claim 39. Therefore, claim 39 is patentable over the cited art.

New dependent claims 40-48 are based on the original dependent claims as filed, while claims 49 and 50 are based on the specification (page 9, lines 17-28). These claims are believed to be patentable at least because of the patentability of independent claim 39.

Claims 4 and 14 were rejected under 35 U.S.C. 103(a) over Agarwal in view of Official Notice. Although this rejection is formally moot in view of the cancellation of claims 4 and 14, Applicant respectfully traverses the Examiner's reliance on Official Notice.

With regard to claim 4, the Examiner cited fees for late payment as a known penalty for violation of a service level agreement. According to the present patent application, however, a service level agreement "provides a service, and a … service level, such as 'ensuring that 95% of all transactions have a response time less then 3 seconds'" (page 6, lines 4-7, in the present patent application), i.e., it relates to the actual level of communication service provided to the consumer, not to payment schedules. The fact that a customer might be penalized for late payment does not fall within the bounds of a service level agreement violation as defined in claim 4.

A similar feature is now recited in new claim 41. If the Examiner chooses to reject claim 41, Applicant asks that Examiner provide documentary evidence that the use of this sort of feature in a service level agreement, as defined in the present patent application, was actually known in the art and could have been used in measuring a business metric regarding IT infrastructure prior to the present patent application.

By the same token, regarding claim 14, although statistical methods such as the chi-square test were certainly known in the prior art, the Examiner has not shown that the notion of treating the measured and modeled business objectives as actual and empirical distributions for this purpose was known or suggested by the prior art.

Applicant has studied the additional references made of record by the Examiner and believes the claims now pending in this application to be patentable over these additional references, as well, whether the references are taken individually or in any combination.

Applicant believes the amendments and remarks presented hereinabove to be fully responsive to all of the grounds of rejection raised by the Examiner. In view

of these amendments and remarks, Applicant respectfully submits that all of the claims in the present application are in order for allowance. Notice to this effect is hereby requested.

Please charge any fees associated with this paper to deposit account No. 09-0468.

Respectfully submitted,

Respectfully submitted,

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Date: 29 July 2008
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